



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wangui v Republic (Criminal Appeal 87 of 2023)  
[2025] KEHC 14672 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14672 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL APPEAL 87 OF 2023  
TW OUYA, J  
OCTOBER 16, 2025**

**BETWEEN**

**PETER MWANGI WANGUI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal arising out of the conviction and sentence of Hon. G. Omodho  
(Senior Resident Magistrate) in Thika Chief Magistrate's Court  
Criminal Case No. 4270 of 2011 delivered on 27th September 2018)*

**JUDGMENT**

1. The appellant was charged with the offence of defilement contrary to Section 8 (1) (2) of the *Sexual Offences Act*. The Particulars of the offence were that on the 21<sup>st</sup> day of August 2011 at around 4.00pm in Murang'a County within the republic of Kenya, by use of his genital organ, namely penis, committed an act which caused penetration to the genital organ namely vagina of ENW, a girl aged 12 years.
2. He also faced an alternative charge of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act*. The particulars of the offence were that on the 21<sup>st</sup> day of August 2011 at around 4.00pm in Murang'a County within the republic of Kenya, committed an indecent act with ENW, a girl aged 12 years by touching her private parts namely vagina.
3. The prosecution called a total of six witnesses and at the end of the trial, the appellant was convicted on the main count of defilement and sentenced to life imprisonment.
4. The Applicant being aggrieved filed an appeal, HCCRA 63 of 2019, to have the conviction quashed and the sentence set aside at the High Court in Kiambu. The appeal on conviction was dismissed and the sentence of life imprisonment reduced to 20 years in a judgement delivered on 17<sup>th</sup> October 2019.



5. Consequently, the Appellant filed an undated Application on 28th February 2024 at the High Court of Kenya at Kiambu, Revision NO. E018 of 2024, under the provisions of Section 333(2) of the Criminal Procedure Code. He sought orders that the period spent in custody pending the determination of the trial be taken into consideration while computing the sentence.
6. The court, determined that the Appellant had spent approximately three years in custody pending the determination of his case. Accordingly, the court allowed the Application for review and ordered that the three years spent in remand pending the completion of the trial be reduced from the sentence of twenty years.
7. When the appellant appeared before me on 4th December 2024, he stated that he wanted the time he had spent in remand custody to be taken into account while computing his sentence.
8. It is trite that Court may only exercise that jurisdiction which has been conferred upon it by *the Constitution*, statute or both. In the case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR the Supreme Court succinctly stated:

‘A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.’

9. This Court derives its jurisdiction principally from Article 165(3) of *the Constitution* which confers upon this Court unlimited original jurisdiction in criminal and civil matters, the provision clearly delineates and demarcates what the Court can and cannot do. The jurisdiction of this Court includes supervisory powers. By dint of Article 165(6) however, this Court cannot supervise superior courts. It provides:

‘The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court. (emphasis)’

10. The Applicant’s case was heard and determined by this Court, which is a superior court. What he now seeks is that this Court reopens the matter and reviews its own decision, a jurisdiction it does not have. In this regard, I associate with the holding in John Kagunda Kariuki v Republic [2019] eKLR, where Ngugi, J, (as he then was) stated:

‘10. In the present case, the Applicant’s appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal.’

11. I am also guided by the holding in Bellevue Development Company Ltd v Francis Gikonyo & 7 others [2018] eKLR, where Kiage, JA considered whether a judge can review the finding of a judge of concurrent jurisdiction and stated:

‘I have no difficulty upholding the learned Judge’s holding that as a judge of the High Court he had no jurisdiction to enquire into or review the propriety of the decisions of the Judges, who were of concurrent jurisdiction as himself. In our system of courts, which is hierarchical in nature, judges of concurrent jurisdiction do not possess supervisory jurisdiction over each



other. No judge of the High Court can superintend over fellow judges of that court or of the superior courts of equal status. That much is plain common sense. It has, moreover, been expressly stated in Article 165(6) of *the Constitution*.’

12. In *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169, Lord Denning delivering the opinion of the Privy Council at page 1172(1) said;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

13. Jurisdiction is everything. There is no appeal or application before me. It is a nullity ab initio. There is even nothing to transfer. In *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR, Justice Nyarangi JA, as he then was stated:

‘Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. ... “By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics.’

14. This position is so well established that it would be a strange aberration for a judge to embark on what is essentially an examination of the judicial conduct and pronouncements of judges of the same status as himself, a task that is left to courts and judges of higher status in the hierarchy, by way of appeals.
15. Flowing from the foregoing, it is clear that this Court cannot supervise a superior court whether of concurrent or higher jurisdiction. The constitutional supervisory jurisdiction and statutory revision jurisdiction of this Court is limited to decisions of subordinate courts and cannot be extended to superior courts.
16. In light of the foregoing, I decline the invitation by the Applicant to scrutinize and interrogate the decision of a judge of concurrent jurisdiction. This issue of the period spent in custody prior to sentencing has already been dealt with in *Kiambu Criminal Revision E018 of 2024*.
17. The Application being incompetent for want of jurisdiction, is hereby struck out.
18. Thirty (30) days stay of execution to apply.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. T. W. OUYA**

**JUDGE**

